

UNITED STATES FEDERAL COMMUNICATIONS COMMISSION

In Re Applications of:)	MM DOCKET No.: 99-153
)	
READING BROADCASTING, INC.)	File No.: BRCT-940407KF
)	
For Renewal of License of)	
Station WTVE(TV), Channel 51,)	
Reading, Pennsylvania)	
)	
and)	
)	
ADAMS COMMUNICATIONS CORPORATION)	File No.: BPCT-940630KG
)	
For Construction Permit for a)	
New Television Station to)	
Operate on Channel 51,)	
Reading, Pennsylvania)	

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Before the
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Washington, D.C. 20554

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Room TWA-363
Federal Communications
Commission
445 12th Street, S.W.
Washington, D.C.

Friday,
March 31, 2000

The parties met, pursuant to the notice of the
Judge at 11:05 a.m.

BEFORE: HONORABLE RICHARD L. SIPPEL
Judge

APPEARANCES:

On behalf of Reading Broadcasting, Inc.:

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APPEARANCES: (cont'd.)

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On behalf of the Federal Communications
Commission:

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P R O C E E D I N G S

(11:05 a.m.)

JUDGE SIPPEL: Let's go on the record. We're back in session in our conference that we continued a few days ago.

Let me take appearances again, please. Mr. Hutton, on behalf of Reading?

MR. HUTTON: Yes. Thomas Hutton on behalf of Reading Broadcasting, Inc.

JUDGE SIPPEL: Okay. Mr. Cole?

MR. COLE: Harry Cole on behalf of Adams Communications Corporation.

JUDGE SIPPEL: Okay. And the Enforcement Bureau?

MR. SHOOK: James Shook on behalf of the Chief, Enforcement Bureau.

JUDGE SIPPEL: Okay. I received Mr. Cole's letter report, and the dates certainly look fine to me. Does anybody have any more announcements or anything?

Go ahead.

MR. SHOOK: There was a question about documents, and we did receive them. They happened to be in my mailbox as soon as I left here on Tuesday.

JUDGE SIPPEL: Anything more on discovery documents? I mean, is everything --

MR. COLE: So far so good, Your Honor.

1 JUDGE SIPPEL: So far so good? That's fair
2 enough.

3 How about the tapes? Is there anything being
4 done?

5 MR. COLE: I haven't heard from Mr. Hutton, but I
6 went ahead and contacted Graffiti, which is a local business
7 that has duplicated tapes for us in the past for hearing
8 purposes, just to get a price, and my understanding from my
9 assistant is that it's less than \$6 per tape for duplication
10 purposes.

11 I calculate there is in the range of there's four
12 tapes per day, and I believe there are 16 to 18 days worth,
13 so whatever that calculates out to. I think it's under 60
14 tapes, around 60 tapes, so 60 times \$6 estimate is what the
15 total cost would be, and we're certainly prepared to split
16 that. That's not a problem.

17 JUDGE SIPPEL: Okay. Does that sound pretty good
18 to you, Mr. Hutton?

19 MR. HUTTON: That sounds like a great price.

20 JUDGE SIPPEL: All right. Well, let's get --

21 MR. COLE: I'd be happy to take care of it
22 directly and just confirm with you in writing if you want.

23 MR. HUTTON: That would be fine.

24 JUDGE SIPPEL: Let's get it underway.

25 MR. COLE: We'll work on that this afternoon.

1 JUDGE SIPPEL: How long do you think it will take
2 them to do it?

3 MR. COLE: Three days. Well, it was two to three
4 days, but I'm not sure whether they understand the volume of
5 tapes coming in, so it may be two to three days for one
6 tape, but it may take for a universe of 60 tapes it may take
7 a week or more. I don't know.

8 I will check on that and let Mr. Hutton know about
9 that.

10 JUDGE SIPPEL: Okay. All right. Well, that
11 sounds really good. That sounds fine. In view of these
12 changed dates, it should not pose a problem. I can
13 understand why, you know. If you're going to seriously look
14 at those tapes, you've got to have them. You've got to have
15 a lot of lead time to do this.

16 MR. COLE: And just for the record, Your Honor, as
17 I say, we've worked with Graffiti in the past in hearing
18 related situations, and they've been very reliable.

19 JUDGE SIPPEL: Okay. Well, that's sounding very
20 good. I'd like to be notified, you know, by letter or some
21 type of communication when that is completed; in other
22 words, when the review has been completed by Mr. Hutton.

23 MR. HUTTON: When the taping is done or when the
24 review is done?

25 JUDGE SIPPEL: No. When your review is done. I'm

1 just going to have to assume that this is going to get done,
2 you know, pronto. It certainly is in everybody's interest
3 to do it. It certainly is in Graffiti's interest to do it
4 to get paid.

5 I'm assuming that there's not going to be any
6 hitches. If there is, it's up to you to let me know. I
7 want to know, you know, when you've done your review, when
8 you've actually received them and looked at them to the
9 extent that you're satisfied that you have them all. That's
10 what I want to know, not what conclusions you've drawn.

11 MR. HUTTON: Okay.

12 JUDGE SIPPEL: Your Honor, if Your Honor would
13 like we'd be happy to carbon you on any correspondence among
14 the parties just relating solely to the status of the
15 project.

16 JUDGE SIPPEL: I think that would be a good idea.
17 I think that would be a good idea because a lot can slip if
18 we get behind on that one, but I'm satisfied that it's well
19 underway.

20 Let me just digress just for a few minutes here.
21 I really do. I want to congratulate you and the prospective
22 mother, the expectant mother, with respect to this event. I
23 was really taken by surprise when you announced it the last
24 time in, so I want to be sure that I want to take this
25 opportunity to do that.

1 MR. HUTTON: I appreciate that. My hope had been
2 that we would get Phase 2 done before this became an issue,
3 and then I obviously had to raise it when that wasn't the
4 case.

5 JUDGE SIPPEL: Well, taking stock here, this I
6 think will be the second birth in the course of a hearing
7 that I've been involved in since I've been here. There was
8 also one marriage that developed as a result of a hearing
9 that I was presiding over because two people met, and before
10 you know it they were married. They were good enough to let
11 me know afterwards.

12 With respect to my off-the-cuff reference to my
13 son-in-law, I'm informed that without any doubt that his
14 office is within walking distance of his home, so he was
15 able to do some things in the office and still be home for a
16 good part of the day, so the situation has got absolutely no
17 relevance to what we were talking about here. He was doing
18 exactly the same thing that you're doing. He just did it a
19 little bit differently. That's all.

20 By the way, they had a midwife come in for the
21 first ten days giving lessons on how to handle this baby.
22 It's very efficient. It was tremendous. It was just
23 tremendous. The obstetrician told them that -- she was in a
24 birthing center. The obstetrician said looks like you've
25 got about five hours. It was 5:00 in the afternoon. He

1 says I'm going to leave you a telephone number. I'm going
2 to be in the pub where you can reach me. When the child was
3 delivered, he had the champagne right there in a bucket, so
4 it worked out just tremendously for them.

5 I hope and trust that your experience will be
6 equally pleasant and enjoyable and that everything works out
7 just fine.

8 MR. HUTTON: We appreciate your good wishes.

9 JUDGE SIPPEL: That's really great.

10 Now getting back to the business at hand, I've got
11 dates that I've sketched out that I think will work, but,
12 you know, even with the June 13 date with what needs to be
13 done this is going to be a pretty tight schedule.

14 Let me tell you what I've sketched out. First of
15 all, as I understand this now once we go into hearing on
16 June 12/13 we're going to keep going until all the issues
17 are heard. Is that right?

18 MR. COLE: That was my understanding.

19 JUDGE SIPPEL: That's what the letter seemed to
20 imply. It didn't really imply. That's what I read the
21 letter to say.

22 Mr. Shook?

23 MR. SHOOK: I agree.

24 JUDGE SIPPEL: So what I would expect to do would
25 be to start with Mr. Bendetti's testimony in rebuttal on the

1 13th and get that out of the way, or even do it on the 12th
2 if we're able to do the admission session in half a day, but
3 I would like to get that done up front, out of the way and
4 then move right into Phase 2, get that completed, take a
5 one-day break, and if we finish on a Friday, you know, that
6 would take care of the break.

7 I think it would make sense to take a one-day
8 break and then come back in and have an admissions session
9 with respect to Phase 3 and then put the witnesses on, and
10 then that will be it.

11 You indicated about two weeks. I mean, that
12 should take us through the end of June.

13 MR. COLE: Even less than the end of June, I
14 think.

15 JUDGE SIPPEL: All right.

16 MR. COLE: It takes us up to --

17 JUDGE SIPPEL: 23rd.

18 MR. COLE: -- the 23rd, 24th, somewhere around
19 there.

20 JUDGE SIPPEL: Which is the third week into June,
21 the third week in June, the third full week in June.

22 In any event, I could feel pretty confident that
23 by the end of June we would have this finished based on what
24 I just sketched out. Nobody's got a problem with that?

25 MR. COLE: That's what we contemplated yesterday

1 when we discussed it among ourselves.

2 JUDGE SIPPEL: Okay. Let me give you some dates.
3 Does everybody have a calendar, or would you care to follow
4 with a calendar?

5 First things first, though. You did indicate, Mr.
6 Hutton, that you may be looking to use expert testimony. Is
7 that still something that you're actively thinking about?

8 MR. HUTTON: I'm still considering it. I haven't
9 decided one way or the other. I'm going to have to reach
10 that decision very soon.

11 JUDGE SIPPEL: Well, maybe I can help you along
12 there. I want to set a deadline of next Friday, April 7, as
13 the last day by which you would file a motion seeking leave
14 to adduce expert testimony, and that motion should identify
15 if not the expert that you have under contract, at least it
16 would identify who were the prospects that you're intending
17 to use as an expert and indicate a proposed discovery
18 schedule under the comparable of Rule 26 discovery; that is,
19 where the other parties would get a summary of his expected
20 testimony and have an opportunity to depose him or her.

21 At the same time, there will be an opportunity to
22 file opposition, and that would be by April 12, which I
23 believe that's a Wednesday. April 7 is a Friday. The 12th
24 is a Wednesday, and I'd want those pleadings in at noon.
25 That is Friday at noon at least to me. Whether you file

1 them the end of the day with the secretary that's fine, but
2 I want my copy by noon, my courtesy copy, and on April 12,
3 which is a Wednesday, also at noon on the opposition.

4 MR. COLE: Your Honor, as far as the 12th is
5 concerned, I anticipate I'll be deposing Mr. Parker on the
6 11th and expect I'll be doing a fair amount of preparation
7 for that. Could we move the 12th over so I would have a
8 week to respond to Mr. Hutton? That would be the 13th.

9 JUDGE SIPPEL: Sure. Do you mean Friday?

10 MR. COLE: Yes, the 13th. The 14th rather. The
11 14th.

12 JUDGE SIPPEL: Any objection to that?

13 MR. SHOOK: No.

14 JUDGE SIPPEL: Yes. All right.

15 MR. COLE: Thank you.

16 JUDGE SIPPEL: We'll give you until the 14th.
17 This doesn't have to be a lengthy motion, but it has to be
18 an informative motion. You know, what legal issue and/or
19 factual issue is this person going to be called to testify
20 to, and how is it going to add, you know, to the
21 deliberative and to the decisional end of this case that
22 needs to be.

23 It's not just something to inform me about how the
24 industry works or something. This person has to really, you
25 know, go right to the heart of an issue and some authority

1 for it in terms of what you intend to do with respect to
2 discovery so that it doesn't impact on this June 13 date
3 that we're talking about.

4 Again, I mentioned this before. We haven't even
5 gotten to the question of whether or not if I grant that, if
6 I grant this request -- this is all hypothetical now -- I
7 then have to give the Bureau and Mr. Cole an opportunity to
8 get their own expert witnesses if they so desire.

9 If that were the case, I would then be inclined to
10 have you try and stipulate as to some mutual expert that you
11 could both agree to. I don't want to get into this business
12 of a contest between experts because that really puts the
13 case in a whole different -- it can impact the case.

14 I want to let you know this up front. These are
15 the things that I'm considering. These are the things that
16 are going through my mind when you mention the word expert.
17 If you have a point, you have a point. Okay?

18 MR. HUTTON: Okay.

19 JUDGE SIPPEL: Discovery will close, and by that I
20 mean all documents delivered and all depositions taken, by
21 May 5, which is a Friday. Please let me know if that's an
22 unreasonable cutoff, but I need to be firm with that so that
23 you can get the other things done.

24 Cases would be exchanged by May 16, which is a
25 Tuesday, and that would be pre-marked exhibits, sworn

1 written testimony, if applicable. I'm not sure on these
2 issues whether or not sworn written testimony because
3 probably everybody is going to have been deposed, and since
4 the burdens are with the parties that sought the issues, the
5 burden to go forward, you know, it would seem to me that I
6 would expect to see most of this being done by just live
7 witnesses coming in as the trial brief provided for, so
8 there shouldn't be any surprise to me or anybody else what
9 they're going to testify to.

10 That would be the request for official notice and
11 stipulations, all that to be done by Tuesday, May 16. Two
12 days later would be the exchange of trial briefs on May 18
13 on a Thursday. As I say, unless I indicate a specific time
14 of the day, this can be done just in the normal course of
15 events. When you file here with the Commission you just get
16 me a copy through the fax system.

17 Subpoenas submitted for signature, if any, on
18 May 22, which is Wednesday. I would not anticipate that
19 there would be much of that needed, if anything at all, but
20 if there for some reason is a last minute reluctance on
21 somebody to come in and testify and you need a subpoena,
22 that would be the deadline for getting it in to me, and
23 that's only for submitting it for signature. It doesn't
24 mean I'm going to sign it.

25 Then we start. On Monday, June 14, at 9:30 we'll

1 have the admission session on the rebuttal and Phase 2, if
2 there is any admission session with respect to rebuttal.

3 MR. COLE: Excuse me. Is it June 14? I thought
4 Monday was June 12.

5 JUDGE SIPPEL: Okay. You're right. It is
6 June 12. I never have totally mastered the keyboard.
7 June 12 it is, Monday, at 9:30.

8 The hearing on Phase 2 then will start at the
9 usual starting time of 10:00 a.m. on June 13, and then we'll
10 switch into 9:30 the days after that.

11 Rebuttal would start with Mr. Bendetti, and then
12 Phase 2 would be Mr. Parker. Now, is it too early? Can you
13 give me some idea, Mr. Shook and Mr. Hutton? What other
14 witnesses might we be considering? Would I anticipate
15 hearing from the attorneys from Sidley & Austin or some of
16 the attorneys from Sidley & Austin?

17 MR. HUTTON: They haven't been deposed yet, so
18 that's hard to say.

19 JUDGE SIPPEL: Okay. I'm trying to think just in
20 terms of the number of witnesses that are going to be coming
21 in. Certainly Mr. Parker.

22 MR. HUTTON: From our side, certainly Mr. Parker.
23 That may be it.

24 JUDGE SIPPEL: That may be it. All right. It
25 depends on how you do with the attorneys.

1 I think that Mr. Parker has to a great extent --
2 well, I should be really asking Mr. Cole in terms of what he
3 feels, who you anticipate calling as witnesses.

4 MR. COLE: At this point, Your Honor, I'm not
5 sure. As I say, we spoke with Mr. Kravetz, and I may be
6 inclined to call him based on his deposition testimony just
7 for factual background purposes.

8 Depending on what we learn from Mr. Wadlow and Ms.
9 Friedman, the same may be true with them and the same may
10 not. At this point I don't know.

11 JUDGE SIPPEL: They're coming in next week?

12 MR. COLE: We're talking to Mr. Wadlow on Monday
13 afternoon and Ms. Friedman on Tuesday.

14 JUDGE SIPPEL: All right. And then again Mr.
15 Parker, and then how about the Bureau? Do you have any more
16 ideas on this, Mr. Shook?

17 MR. SHOOK: Well, I was going to elaborate on our,
18 you know, intended activities over the course of the next
19 couple of months when we reached a proper point for that,
20 but as far as this is concerned I'm definitely playing
21 second fiddle to, you know, what Mr. Cole is doing.

22 We've done our document discovery. We've sent out
23 our interrogatories. We've received answers. I
24 participated with respect to Mr. Kravetz' deposition. I
25 intend to participate with respect to the other three

1 depositions, but generally taking a back seat role not only
2 with respect to, you know, the issue concerning Mr. Parker's
3 candor, but also with respect to the issue that Mr. Hutton
4 sought and received relative to Adams. I figure we'll be
5 taking a back seat role to that as well.

6 To the extent, for example, that there are
7 depositions that take place in Chicago, I certainly don't
8 envision, you know, my traveling out to Chicago for those.
9 First of all, I don't think we have the money. To the
10 extent that I do become involved in those depositions, I'm
11 sure it's going to be by telephone. It will definitely be a
12 secondary role.

13 JUDGE SIPPEL: He could be patched in, couldn't
14 he, on a phone?

15 MR. COLE: Yes. That's what he did with Mr.
16 Kravetz.

17 MR. SHOOK: I participated by telephone with
18 respect to --

19 JUDGE SIPPEL: Mr. Kravetz is here locally,
20 though.

21 MR. SHOOK: It was local, but --

22 MR. HUTTON: We couldn't get Mr. Shook on the
23 subway.

24 MR. COLE: That does raise a question if I might,
25 Your Honor, if I may direct a question to Mr. Shook. The

1 Sidley & Austin folks asked if you would be there on Monday
2 or Tuesday. I assume they want to know how many chairs they
3 need to provide.

4 MR. SHOOK: It's conceivable I would be able to be
5 there on Monday. I've got other things that I have to do
6 that would possibly or perhaps at this point probably
7 preclude me from being there on Tuesday.

8 MR. COLE: If you're not going to be there, if you
9 would let us know so we can get on a speakerphone? If you
10 want a speakerphone, let us know that.

11 MR. SHOOK: Will do.

12 JUDGE SIPPEL: Well, all right. It's up the
13 Bureau. The Bureau decides for itself how much they want to
14 get involved in this. You are not opposed to any of those
15 issues, so I'm taking it that, you know, it's your --

16 MR. SHOOK: We definitely have an interest, but as
17 far as that goes we believe that our interests can be
18 satisfactorily met with the two principal proponents of
19 those issues going at each other full bore, and we'll supply
20 questions and provide insights when we believe necessary.

21 JUDGE SIPPEL: All right. Under the
22 circumstances, I would say that's appropriate as we go
23 along. We'll see what happens, but that's fine.

24 Where did I leave off on dates? I was on June 13.
25 All right. So it remains to be seen who these other

1 witnesses are going to be, but it certainly is going to be
2 Mr. Parker, and it's probably going to be one, two or three
3 attorneys, depending on how things work out with
4 depositions?

5 MR. COLE: I believe so, Your Honor.

6 JUDGE SIPPEL: Is there anybody else? I don't see
7 anybody else that would be out there. Again, I'm trying to
8 get a feel for how long things should be taking.

9 MR. SHOOK: I can assure you right now that our
10 principal concern is with Mr. Parker.

11 JUDGE SIPPEL: That makes sense.

12 Okay. Then, as I said, we will take a one day
13 break. If we finish on a Friday, we'll just pick up the
14 following Monday with Phase 3. We'll start off again with
15 an admission session on this.

16 I thought about doing admissions all at one time,
17 but I just think for purposes of even just keeping mental
18 track in terms of what's happening, I'd sooner break this
19 up, bifurcate it a little bit. The time doesn't make any
20 difference because it's going to take the same amount of
21 time.

22 We'll have a short, and I think it would be a
23 short admission session, and then Mr. Gilbert would testify,
24 would be called I take it. Again, you're going to call him
25 as your witness, Mr. Hutton?

1 MR. HUTTON: Mr. Gilbert and perhaps others.

2 JUDGE SIPPEL: Well, that's what I have here.

3 Other principals. Do you know now? Do you have a good idea
4 now as to whether or not you'll be calling some or all of
5 the other principals of Adams? What ideas do you have as of
6 now?

7 MR. HUTTON: My sense is it's pretty likely that
8 we'll call at least one or two other principals. I don't
9 know that we'll call the whole gamut, but I'd be kind of
10 surprised if it were only Mr. Gilbert.

11 JUDGE SIPPEL: All right. I don't remember the
12 names exactly now except for Mr. Gilbert, but I know there
13 was at least one other who I would categorize as kind of
14 like one of the lead principals, and then there was another
15 one, too, who had an interest in Spanish broadcasting or
16 something.

17 I'm not sure if I'm mixing the two issues with the
18 same principal, but I would expect to see up to three anyway
19 just on that alone. What else develops in your depositions
20 is something else again.

21 Anything else to add on that, Mr. Shook or Mr.
22 Cole?

23 MR. SHOOK: I'm perfectly happy to see who Mr.
24 Hutton decides to bring, and I anticipate that Mr. Cole
25 might want to bring one or several of the others as possible

1 rebuttal witnesses, so I'm sure that we'll be able to
2 fulfill whatever concerns we have through Mr. Hutton's and
3 Mr. Cole's efforts.

4 JUDGE SIPPEL: All right. How many principals are
5 there in Adams all told?

6 MR. COLE: To be honest, Your Honor, I'm not --

7 JUDGE SIPPEL: Six? Seven?

8 MR. COLE: No. No. I think there are probably
9 eight or ten, but I'm not sure.

10 JUDGE SIPPEL: Eight or ten?

11 MR. COLE: Yes.

12 JUDGE SIPPEL: You wouldn't anticipate bringing
13 all eight or ten?

14 MR. COLE: No. No, no.

15 JUDGE SIPPEL: Okay. Would there be any other
16 witness or type witness that you would be thinking of?

17 MR. COLE: Not that I've contemplated so far, but
18 we haven't even begun the discovery process so I don't know,
19 you know, what might turn up along the lines.

20 As of right now, I would not anticipate anywhere
21 close to ten witnesses. I would contemplate more likely
22 three, and those might be the same three that Mr. Hutton
23 would or that you anticipate might otherwise be here, so
24 there may not be any separate witnesses for Adams at all.

25 JUDGE SIPPEL: Well, procedurally you'd be calling

1 them back as a witness if it was a question of Mr. Hutton
2 making out a prima facie case. On the other hand, it would
3 be certainly convenient to everybody, including the witness,
4 if you just handled it all on the stand at the same time.

5 Of course, you'd have an opportunity for a break
6 in between. I don't want to call it cross-examination, but,
7 you know, certainly perhaps calling it redirect or something
8 from your standpoint.

9 I'd appreciate some real thought given to that
10 because I can be very candid. Although I am requiring the
11 parties to go forward with the burden of going forward, it's
12 not going to take too much to tilt the ultimate burden of
13 proof with respect to the party against whom the issue has
14 been charged.

15 In other words, the burden can shift, and it can
16 shift based on my understanding of these issues. It could
17 shift pretty quickly. Just so nobody is surprised by that;
18 not that I expect that you would be.

19 Then if we're going to have expert testimony,
20 expert testimony would come last. That's what I would
21 contemplate, unless you had a reason to put that in up front
22 if you think that for purposes of, you know, presenting some
23 sort of a setting under which the rest of the testimony
24 should be heard. You know, I would be open to that, but
25 right now it's too early to tell.

1 I don't have any conferences to schedule, but
2 there certainly will be conferences as needed. I take it
3 there is no objection to using the informal telephone
4 conferences for straightening out logistical questions and
5 things like that. That's worked out pretty well so far.

6 MR. HUTTON: I agree.

7 MR. COLE: I have no problem with that.

8 JUDGE SIPPEL: Mr. Shook?

9 MR. SHOOK: It's very easy for me.

10 JUDGE SIPPEL: You like the phone.

11 All right. That's all I have. Of course, I'll
12 reduce these dates to writing and get an Order out right
13 away on it. I can't think of anything else to cover with
14 you all.

15 MR. SHOOK: I would like to raise a couple of
16 matters.

17 JUDGE SIPPEL: Yes. Please do.

18 MR. SHOOK: Perhaps I was missing something, but
19 has there been any even preliminary statement as to what the
20 expert witness would be used for?

21 MR. HUTTON: I don't want to get into that until I
22 make my determination.

23 JUDGE SIPPEL: That's why he's going to file it by
24 motion.

25 MR. SHOOK: I was just wondering whether something

1 had come up and perhaps I was asleep and missed it.

2 JUDGE SIPPEL: You know, if you show up in
3 person --

4 MR. SHOOK: Apparently not.

5 JUDGE SIPPEL: -- and don't go by telephone maybe.

6 MR. COLE: Your Honor, I view that as an admission
7 against Mr. Shook's interest.

8 JUDGE SIPPEL: I will assure you, Mr. Shook. I'm
9 sure that I'm equally as curious as you are. I think that
10 Mr. Hutton is entitled to his time for reflection and
11 contemplation.

12 MR. SHOOK: I am not asking Mr. Hutton to divulge
13 anything before he would wish to do so. I just wanted to
14 make sure that I didn't miss something that had come out and
15 might have, you know, a further impact on what I intend to
16 say.

17 The next thing being that whether or not the
18 Bureau files a response to a motion that Mr. Hutton may or
19 may not file is something that I would definitely like to
20 reserve decision on, as opposed to saying that the Bureau
21 will definitely file responsive comments. I have no idea at
22 this point whether we will or we won't.

23 It could well be that whatever appears in Mr.
24 Hutton's motion the Bureau would be completely neutral on
25 and would simply wait to see, you know, how Mr. Cole reacts,

1 who in turn may not have a problem with what Mr. Hutton
2 wants to do, and then again if he has a significant problem,
3 well, he'll say so.

4 The second point with respect to the trial briefs.
5 I would anticipate that the trial briefs filed by the other
6 parties would encompass any possible concerns that we would
7 have, would set forth both ends of the law because I don't
8 imagine at this point they will see things the same way, and
9 I'm pretty certain that we're going to end up somewhere in
10 the middle.

11 In terms of where we end up and how and when we
12 say it, I feel far more comfortable with the idea that we
13 will say whatever it is that we need to say in the proposed
14 findings of fact and conclusions of law. To that extent, I
15 don't anticipate right now the Bureau submitting a trial
16 brief relative to either issue.

17 JUDGE SIPPEL: All right. I don't have any
18 problem with that, but if you're going to respond to it,
19 May 18 is a Thursday. If you are going to comment, I want
20 to see your document by let's say Tuesday, the 23rd.

21 MR. SHOOK: That would be fine.

22 JUDGE SIPPEL: If you don't comment, then I'll
23 just assume you don't comment.

24 MR. SHOOK: Thank you. I just didn't want to
25 leave the impression that we were definitely going to be

1 filing a trial brief when in fact we had no plans at present
2 to do so.

3 JUDGE SIPPEL: Okay. Well, thank you for telling
4 me that. I had not focused on that, but I hear what you're
5 saying, and it makes eminent sense. As long as it's clear
6 that you know that if you have something to say about the
7 trial briefs that you think will help the proceeding or
8 whatnot, I'd like to receive it by the 23rd.

9 MR. SHOOK: Certainly.

10 JUDGE SIPPEL: You know, getting back to that
11 expert, because that's certainly an interesting issue, and
12 nobody has to say anything about what I'm saying right now.
13 My observation is that you may want to talk to the Bureau
14 about it. You may want to try and win some commonality over
15 before coming in with your motion if it's there to be had.

16 I mean, nobody seems to know exactly what you have
17 in mind so it's really hard to react to me, but, as I said,
18 where I would be if it ever came to it, and it's going to
19 take a good deal to persuade me, but I would be pushing to
20 have, as I said before, one expert, you know, that you could
21 share the cost with if it was that type of testimony.

22 I guess what I'm trying to say is that if that is
23 in the cards, if you think that's in the cards, you might
24 want to be talking to Mr. Shook and/or Mr. Cole between now
25 and the 7th before you decide to file. On the other hand,

1 if you look at it, you know, from a different vantage point
2 and you want to just go ahead, make your decision, file on
3 the 7th, that's all fine. That's all fine and well, too.
4 You know, I'll deal with it any way you want.

5 That's about it. That's about all that I have to
6 say. Really, I think this has been very, very helpful that
7 you've taken the time yourselves to get these dates, these
8 ultimate dates worked out. As I said, you know, when you
9 start parsing these dates out that way it's a fairly tight
10 schedule.

11 You're going to have to depose -- Mr. Hutton, I'm
12 talking to you now. I mean, you're going to have to depose
13 these Adams principals, and you're going to have to take a
14 look at the tapes or have somebody take a look at the tapes,
15 have some control over those tapes probably before you're
16 going to take the depositions, I'm assuming. Am I right?

17 MR. HUTTON: You're right. You know, there are no
18 assurances in life, and there are no assurances that we'll
19 be able to meet the schedule, but I think it's a good
20 schedule to shoot for, and I'm committed to trying to get it
21 done by then.

22 JUDGE SIPPEL: Okay. Well, I'm getting more and
23 more to like it. I do have another hearing that I have to
24 schedule. In fact, I'm going to have a conference with
25 somebody on the west coast this afternoon. I intend to

1 schedule something in the middle of July out there, the
2 middle or the third week of July, so I'm going to be in a
3 bind if we don't, you know, I'm not saying literally meet
4 these dates, but substantially meet these dates.

5 I'm taken with the idea that there's going to be
6 so much discovery and so much preparation work going into
7 this, and there's really so few witnesses, you know, on a
8 relative basis, relatively speaking basis, that once we do
9 get into hearing it should go pretty quickly, but, as you
10 say, nobody ever really knows. Nobody ever really knows.

11 There certainly won't be any duplicative questions
12 coming from the Bureau's side. I'm sure of that. Right,
13 Mr. Shook?

14 MR. SHOOK: I hope not.

15 JUDGE SIPPEL: I don't think so. Listen, the way
16 the first phase went, if the second phase goes that well
17 I'll be very -- with the exception of some documents, but
18 you're not going to have documents like you had in the first
19 phase so this should go along pretty smoothly, I would
20 think.

21 MR. SHOOK: I wanted to bring to your attention
22 one other point, Your Honor. With respect to documents that
23 are apt to be exhibits with respect to Issues 2 and 3, I
24 would anticipate joining, you know, Mr. Cole and/or Mr.
25 Hutton as the case may be as a joint sponsor with respect to

1 some of those documents. I don't anticipate right now the
2 Bureau having any documents of its own that it would
3 introduce.

4 JUDGE SIPPEL: All right. Well, the documents for
5 the most part will be the record of what was, or at least
6 with respect to Phase 2 will be what was disclosed and what
7 relates to disclosure, so there should be a pretty good
8 control over those documents. That's fine. You don't have
9 to sponsor any of those documents.

10 The same thing with respect to Phase 3. It's
11 going to be pretty much -- have you made a document request?
12 Is there a document request?

13 MR. SHOOK: I'm going to file it today.

14 JUDGE SIPPEL: All right. Now, you know, this is
15 where I can be helpful. If things are getting slow, and I
16 know Mr. Cole doesn't hesitate to do this, but if you're
17 getting any kind of delay or if you think that I can be of
18 help, please let me know because it's in my interest to keep
19 this moving and not to get something bogged down that I
20 could perhaps unplug.

21 You know, we're dealing with the Adams principals
22 are all obvious. I mean, I've seen their resumes. I mean,
23 these are solid business people. They know how to do
24 things. There shouldn't be much of a problem, I don't
25 think, in terms of being responsive, but we'll, you know,

1 just have to take it one step at a time.

2 I want to get back to those tapes now. Those
3 tapes have to be under your control as soon as possible, Mr.
4 Hutton. I don't know what you're going to do, but when it
5 comes down to the hearing, you know, I've made this speech
6 before, but I don't want any tapes being offered into
7 evidence, you know, unless you've given me something
8 preliminary up front in terms of a motion and explained very
9 carefully why it is that you feel there is something on
10 those tapes that I have to see. I don't want to get down
11 that road.

12 You know, I've been very clear on that.
13 Fortunately, one of the best rules that the Commission ever
14 adopted was that one about with respect to getting
15 transcripts.

16 Go ahead. Did you want to say something about
17 that?

18 MR. HUTTON: Well, I had anticipated following the
19 procedure that you had I think suggested earlier on, which
20 was to have someone with experience in the industry review
21 the tapes and be prepared to be a factual witness as to the
22 content of the tapes.

23 JUDGE SIPPEL: I don't know. Did I suggest that?

24 MR. HUTTON: I believe you did.

25 JUDGE SIPPEL: I think I suggested that you have

1 somebody review the tapes for you.

2 MR. HUTTON: Right.

3 JUDGE SIPPEL: Perhaps that would be a trial
4 preparation kind of a person. I didn't necessarily think
5 that I was going to hear that person testify.

6 There can be transcripts. If you want me to look
7 at direct evidence of what is actually on those tapes, the
8 portions of the tapes should be reduced to writing, a
9 transcript that will be marked.

10 MR. HUTTON: Well, I don't know what's on the
11 tapes so I --

12 JUDGE SIPPEL: I understand. I know. I know.
13 I'm not trying to pin you down.

14 MR. HUTTON: Yes.

15 JUDGE SIPPEL: I'm simply trying to let you know
16 where I'm coming from so that if you do come to a point in
17 your review or in your trial preparation where you feel that
18 you've got some kind of a procedure in mind that I should
19 know about, bring it to my attention up front so that we
20 don't get into it in the middle of the hearing. You know,
21 you might be able to convince me of something you want to
22 do.

23 MR. HUTTON: Let me tell you right now what I had
24 anticipated doing, which is to have someone with some
25 expertise in the industry review the tapes and then be a

1 fact witness for me as to the content of the tapes.

2 I think, you know, without having seen the tapes
3 that seems to me to be the most reasonable way to get in
4 evidence as to what the tapes contain or don't contain. The
5 witness can be cross-examined, and if Mr. Cole feels that
6 transcripts of the tapes would be helpful in the cross-
7 examination, he can introduce them.

8 JUDGE SIPPEL: I don't think that's going to work.
9 I don't think that's going to work. There's no way that I
10 could expect Mr. Cole to be satisfied with anything coming
11 in like that. The cross-examination would be
12 extraordinarily extensive and difficult. I don't know how
13 much of a record we could make with that.

14 If your position is that there was either none,
15 nil or totally disinterested review of the tapes for
16 purposes of being able to make the assessment that one would
17 expect before you file a competing application, I don't know
18 what that much difference it would make in terms of what is
19 on the tapes for that purpose.

20 Now, for purposes if your position was to be and
21 you want to take the position that the tapes either had the
22 wrong programming as to the wrong station, it was done so
23 unartfully, that is the procedure for the recording was so
24 unartful that nobody can make any sense out of it anyway,
25 you know, if there were gaps, that would be more in terms of

1 the technical reliability of the tapes for purposes of
2 reviewing them.

3 That's a different issue, too, but that doesn't
4 mean that you have to do it your way. Again, you could use
5 this by way of transcripts. You could have somebody testify
6 that, yes, with respect to Tapes 1, 2 and 3 there were 15
7 minute gaps at this point, this point and this point. From
8 that you would be seeking a conclusion perhaps that there
9 was no way that those tapes were any good to anybody who
10 wanted to make an assessment of the program.

11 I'm into hypotheticals here, but I'm trying to
12 game plan this thing in terms of what types of evidence I
13 would expect to see on this.

14 MR. SHOOK: If I recall, Your Honor, you made
15 reference to a rule which indicated that in this situation
16 what you'd be looking for is transcripts, so --

17 JUDGE SIPPEL: Transcripts, yes.

18 MR. SHOOK: I only have a vague recollection of,
19 you know, what Mr. Hutton was referring to in terms of
20 somebody who would review the tapes and then possibly serve
21 as a fact witness. I just really wasn't too clear on what
22 that was all about.

23 JUDGE SIPPEL: I'd like to see the transcript
24 wherever I said that, if that's what I actually said. I did
25 certainly say that you should have somebody review the

1 tapes, and it should be somebody who has some knowledge of
2 the subject matter, but that would be for purposes of trial
3 preparation, somebody that you could sit down with who could
4 say look, you know, here's a plan of action with respect to
5 how to deal with these tapes, not for purposes of coming in
6 here and telling us what's on the tapes.

7 MR. HUTTON: But getting these tapes transcribed
8 and then introducing the transcripts into the record seems
9 to me to be pretty much a waste of everyone's time.

10 MR. SHOOK: May I interject here? Wouldn't there
11 be some reasonable possibility that as far as what is on the
12 tapes that that would be subject to stipulation between
13 yourself and Mr. Cole? I have a hard time understanding
14 that there would be any dispute as to what was actually on
15 the tapes.

16 Where we might have some questions or problems
17 would be what instructions were given for taping, who did
18 the taping, what kind of controls were placed on those
19 individuals with respect to the taping they did, what kind
20 of review was done by Adams personnel with respect to the
21 material that was actually taped.

22 That really doesn't have anything to do with the
23 tapes themselves and the contents of the tapes. Those
24 questions are far more significant than what appears on the
25 tape itself, which I will repeat I believe is subject to

1 stipulation.

2 JUDGE SIPPEL: I mean, that's the long and short
3 of what I've been trying to get at here. As I said, if you
4 want to put segments of it into the record for whatever
5 reason you might have the transcripts is the way to go
6 because the rule does provide for that. Again, it's 1.357.

7 Observing a tape of programming in the courtroom
8 and then having it marked and put in the record, I can't see
9 any purpose that that would serve. I'm not here to review
10 programming.

11 MR. HUTTON: I'm not trying to. I was --

12 JUDGE SIPPEL: I know.

13 MR. HUTTON: -- trying to avoid that.

14 JUDGE SIPPEL: I know.

15 MR. HUTTON: I was trying to avoid it by offering
16 a fact witness who would say I've reviewed the tapes, and my
17 conclusions, based on my review, are A, B, C, D, E.

18 JUDGE SIPPEL: That would be getting more into the
19 area of the expert testimony perhaps that you were getting
20 at. I mean, maybe you have something else in mind, but
21 somebody who was qualified, what is he going to do? He's
22 going to do what? He's going to tell me or he's going to
23 tell the record what he saw the programming to be.

24 I think, you know, Mr. Shook has got right to the
25 heart of the matter. We really don't have to know precisely

1 what the programming is. We have to know categories of
2 them. You've got the logs and all that type of thing, but
3 we're more interested in terms of whether or not -- we want
4 to know what the Adams principals did in terms of getting a
5 reliable read on what the programming was about and how that
6 review prompted them to make a decision to file a competing
7 application and all the interstices that fall in between
8 that state.

9 MR. SHOOK: Or whether it had anything to do with
10 their decision to file the application.

11 JUDGE SIPPEL: Or whether it had anything to do
12 with it, yes.

13 MR. HUTTON: There's a little more to it than
14 that. I understood Mr. Gilbert's testimony to mean that he
15 reviewed the tapes, and he saw Reading PSAs on those tapes.
16 If I have a third party review the tapes and the third party
17 says there are no Reading related PSAs on those tapes then I
18 want to be able to have that in the record, and if I
19 introduce anything less than the entire transcript of every
20 tape in the record then Mr. Cole could say well, he's
21 omitted it.

22 JUDGE SIPPEL: Well, if it came to that then there
23 would have to be some way of getting to having both sides
24 present. You know, the burden at some point would have to
25 shift to somebody to say that well, here's the spot at which

1 I find a PSA.

2 Obviously finding negatives is not the way to
3 proceed on that, but there would have to be some way that
4 the parties could agree as to what or what is not on those
5 tapes. If you've got somebody that looks at it and says
6 there were no PSAs, but you've got somebody that really has
7 a different definition or a different standard as to what is
8 a PSA than does say, for example, Mr. Cole, then we've got a
9 fact matter we've got to straighten out.

10 The way that would be handled, I mean, it's a big
11 hypothetical here. Whoever was contending that that is a
12 PSA type of programming would have the responsibility to get
13 it transcribed so that we could all take a look at it, you
14 know, in hard copy form and say is that in fact a PSA.

15 I'm hoping that it doesn't come to that, but
16 that's the kind of way that that's got to be handled, not
17 having some third party come in and testify totally hearsay
18 as to what he thinks he saw on the tapes.

19 I hope this is of some help to you.

20 MR. SHOOK: It's food for thought certainly.

21 JUDGE SIPPEL: Well, I'll tell you, you know. You
22 know what's going to happen. If you want to have a
23 pre-hearing conference on it after you've done your review
24 and you want to, you know, proffer how you want to approach
25 this, I'll be glad to do it because I hate to see everybody

1 disappointed the day of the hearing when you find out you
2 can't get in what you thought you were going to get in.

3 I don't have an up front answer for you because,
4 you know, I've never handled this exact type of situation
5 before. I have handled issues with tapes in a non-FCC case,
6 and that's pretty much the way. There were no tapes that
7 came into the record.

8 I'm not saying that there's absolutely under no
9 condition will there ever be a tape received in a case. I'm
10 just simply saying that I'd have to see the issue very
11 clearly framed because I'm relying on that 357 rule that the
12 Commission has adopted. I'm sure the Commission doesn't
13 want to see tapes coming into its records.

14 MR. HUTTON: I don't either. I'm trying to come
15 up with a way to make my case without introducing any tapes
16 into the record --

17 JUDGE SIPPEL: I understand that.

18 MR. HUTTON: -- and minimizing the amount of
19 transcripts that we introduce.

20 JUDGE SIPPEL: I appreciate that. I am not going
21 to put you to the burden as we're sitting here today of
22 transcribing the entire series of those tapes, number one.

23 Number two, what I was urging you to do is I'm
24 assuming that somebody from your side of the table has to
25 sit down and go through those tapes, the same way that

1 you're expecting that you're going to hear from the Adams
2 side. You've got to know what is and what is not on that
3 tape. If one of the tapes happens to be given to you and
4 it's blank, you know, you'd want to know that.

5 MR. HUTTON: Right.

6 JUDGE SIPPEL: So for that reason, as I say,
7 you're going to want somebody who is somewhat knowledgeable
8 in the area of the technique of taping things to sit down
9 and spend the time to go through all those tapes. It's
10 going to be time consuming. I figure that you probably
11 don't want to do it.

12 I think this is very helpful. I think this is
13 very helpful, and I want to urge you to that. If you come
14 up with a scheme by which you think you're going to get some
15 of this evidence in and you're not sure about it, let's have
16 a pre-hearing conference on it.

17 MR. HUTTON: I appreciate that.

18 JUDGE SIPPEL: All this is is an evidentiary
19 ruling. It has nothing to do with the outcome of the case.

20 MR. HUTTON: I appreciate that.

21 JUDGE SIPPEL: Okay. Anything else?

22 MR. COLE: Nothing, Your Honor.

23 MR. SHOOK: One other question. With respect to
24 Phase 3 discovery, I take it that the Bureau could utilize
25 interrogatories?

1 JUDGE SIPPEL: Yes. Nothing too extensive.

2 Whatever you feel you need though, yes.

3 MR. SHOOK: Thank you.

4 JUDGE SIPPEL: More in terms of -- all right.

5 I'll leave that up to you, but I'll make an exception for
6 the Bureau. You've been responsible about how you've done
7 it in the past, and I'm assuming that's going to be the way
8 now.

9 You'll cooperate with that, Mr. Cole?

10 MR. COLE: Yes, Your Honor.

11 MR. HUTTON: I guess I should mention I had been
12 planning to do interrogatories as well because of the nature
13 of Mr. Gilbert's testimony, some of the vagueness.

14 JUDGE SIPPEL: Could you work together with Mr.
15 Shook on them?

16 MR. HUTTON: Sure. I'd be happy to.

17 JUDGE SIPPEL: All right. Okay. All right.

18 Well, I'm not going to make a speech about them, but it's
19 going to be -- well, I shouldn't say it, but in pinning down
20 witnesses from interrogatories, unless you're asking about
21 what place he was at at a certain time or what documents he
22 referred to or what other people know about it, is a pretty
23 tricky thing to do.

24 MR. HUTTON: Well, I mean, for instance, Mr.
25 Gilbert couldn't recall any names or any details about any

1 of the people who did the taping, and we want to depose
2 them. We have to find out who they are.

3 JUDGE SIPPEL: Well, that's legitimate. Those
4 interrogatories should go out pronto. Those types of
5 questions I put in a different category. They're
6 interrogatories, no question about it, but if you're just
7 looking for names, dates and places, you know, those should
8 go out pretty quick.

9 If you're going to go down through his testimony
10 and start asking questions with respect to what he testified
11 to in terms of substance, you know, it might get a little
12 bit more -- it can become more problematic.

13 MR. HUTTON: Okay.

14 JUDGE SIPPEL: I mean, even if you want to come in
15 and ask for a second waiver, the first ones should be, yes,
16 names, dates and places and identification of documents.
17 Absolutely.

18 MR. HUTTON: All right. I'll share my draft with
19 Mr. Shook, and we'll --

20 JUDGE SIPPEL: Yes. Do it. Do it.

21 MR. HUTTON: We'll cooperate.

22 JUDGE SIPPEL: Do it, and move quickly on it.

23 What's the time that's usually allowed to respond
24 under the rules? Does anybody know offhand?

25 MR. SHOOK: Is it 14 days?

1 MR. HUTTON: I think it's 14 days.

2 JUDGE SIPPEL: Fourteen? Fourteen on a request?
3 Okay. I'll see if there's some way if I can shorten that
4 up.

5 I've got to give you enough time to do it, but if
6 this is the type of questions that they are, you should get
7 questions right back on them so then if there's going to be
8 an area that we've got a problem with we can know it right
9 up front.

10 As I say, if you're going to get into narrative,
11 judgmental type answers then those become much more
12 problematic.

13 MR. HUTTON: Okay.

14 MR. COLE: As far as time is concerned, Your
15 Honor, I believe Mr. Gilbert is out of town all next week
16 still in Spain.

17 I faxed him or faxed to his office following our
18 previous conference on Tuesday, and I've not heard any
19 response at all from him so I don't know whether he's gotten
20 word or what's going on, but my understanding was he would
21 be out of the country for two weeks.

22 If you're going to shorten my response time, just
23 be advised that if you shorten it up to next Friday there
24 may be problem.

25 JUDGE SIPPEL: Okay. Thank you. What would be

1 his expected time of arrival?

2 MR. COLE: Again, I'm not sure. My understanding
3 when he left was that he was going to be out of the office,
4 out of the country, for two weeks, which would be this week
5 and next week.

6 JUDGE SIPPEL: All right. Well, under those
7 circumstances we'll give you the regular 14 days if that's
8 what it is. You know, maybe a day or two shorter. We're
9 into the last week of March. He's gone this week. He'll be
10 gone. He should be back in his office sometime around the
11 week of the 10th?

12 MR. COLE: That's my guess. It could be before
13 that.

14 JUDGE SIPPEL: That's your guess.

15 MR. COLE: It could be before then. I don't think
16 it's going to be after then, but I don't know for sure. He
17 was fairly vague when he said, you know, I'm going to be out
18 of the office for two weeks.

19 JUDGE SIPPEL: Well, I'm assuming that even if the
20 interrogatories are close to ready to go, I'm assuming that
21 the 3rd really -- I wouldn't count anything until the 3rd,
22 which is Monday, but I would like those answers to come in
23 by the end of the following week on the 14th unless there's
24 a good reason as to why.

25 Now, I'm talking obviously if he's clearly not in

1 the country and he's clearly not going to be back before the
2 14th, then there's nothing I can accomplish here. When can
3 you find out when he's going to be back?

4 MR. COLE: I can call his office this afternoon
5 and find out if they can give me information, but again I
6 anticipate that he's going to be back on the 6th or the 7th,
7 a week from today. If that's the case, then the 14th would
8 probably give us plenty of time.

9 JUDGE SIPPEL: Well, what I'm going to do is I'm
10 going to set the 14th down, and if you've got a problem
11 certainly, you know, come back and raise the problem.

12 MR. COLE: Fine. Thank you, Your Honor.

13 JUDGE SIPPEL: You know, if he's out of the
14 country or people are sick, obviously we're going to make
15 allowances.

16 I hope he's not up in the Basque country or
17 something. It's beautiful country, but it's a little bit
18 unstable.

19 Okay. I think that's it. It's high noon. We've
20 accomplished a lot. As I say, I will get this down to
21 writing. If you don't see it this afternoon, you'll see it
22 Monday morning. We'll just take it from there. Okay?

23 MR. COLE: Thanks.

24 MR. SHOOK: Thank you.

25 JUDGE SIPPEL: Good luck, Mr. Hutton.

1 MR. HUTTON: Thank you, Your Honor.

2 (Whereupon, at 12:00 p.m. the hearing in the
3 above-entitled matter was concluded.)

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REPORTER'S CERTIFICATE

FCC DOCKET NO.: MM Docket No. 99-153

CASE TITLE: Reading Broadcasting, Inc.


HEARING DATE: March 31, 2000

LOCATION: Washington, D.C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Federal Communications Commission.

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